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6 **BEFORE THE**
7 **BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS**
8 **DEPARTMENT OF CONSUMER AFFAIRS**
9 **STATE OF CALIFORNIA**

10 In the Matter of the Accusation Against:

Case No. VN-2008-710

11 **PAUL ALFRED RIES**
12 **3685 Vermont Street**
13 **San Diego, CA 92103**

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

Vocational Nurse License No. VN 212099

Respondent.

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16 **FINDINGS OF FACT**

17 1. On or about April 5, 2011, Complainant Teresa Bello-Jones, J.D., M.S.N., R.N., in
18 her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric
19 Technicians, Department of Consumer Affairs, filed Accusation No. VN-2008-710 against Paul
20 Alfred Ries (Respondent) before the Board of Vocational Nursing and Psychiatric Technicians.
21 (Accusation attached as Exhibit A.)

22 2. On or about November 23, 2004, the Board of Vocational Nursing and Psychiatric
23 Technicians (Board) issued Vocational Nurse License No. VN 212099 to Respondent. The
24 Vocational Nurse License expired on February 28, 2008, and has not been renewed.

25 3. On or about April 5, 2011, Respondent was served by Certified and First Class Mail
26 copies of the Accusation No. VN-2008-710, Statement to Respondent, Notice of Defense,
27 Request for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6,
28 and 11507.7) at Respondent's address of record which, pursuant to Business and Professions

1 Code section 136 and California Code of Regulations, title 16, section 2504, is required to be
2 reported and maintained with the Board, which was and is:

3 3685 Vermont Street
4 San Diego, CA 92103

5 4. Service of the Accusation was effective as a matter of law under the provisions of
6 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
7 124.

8 5. On or about April 13, 2011, the aforementioned documents were returned by the U.S.
9 Postal Service marked "Return to Sender - Moved Left Address - Unable to Forward." The
10 address on the documents was the same as the address on file with the Board. Respondent failed
11 to maintain an updated address with the Board and the Board has made attempts to serve the
12 Respondent at the address on file. Respondent has not made himself available for service and
13 therefore, has not availed himself of his right to file a notice of defense and appear at hearing.

14 6. Government Code section 11506 states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts
17 of the accusation not expressly admitted. Failure to file a notice of defense shall
18 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
19 may nevertheless grant a hearing.

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 VN-2008-710.

23 8. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
27 respondent.

28 9. Pursuant to its authority under Government Code section 11520, the Board finds
Respondent is in default. The Board will take action without further hearing and, based on the
relevant evidence contained in the Default Decision Evidence Packet in this matter, as well as
taking official notice of all the investigatory reports, exhibits and statements contained therein on

1 file at the Board's offices regarding the allegations contained in Accusation No. VN-2008-710,
2 finds that the charges and allegations in Accusation No. VN-2008-710, are separately and
3 severally, found to be true and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$702.50 as of May 4, 2011.

7 **DETERMINATION OF ISSUES**

8 1. Based on the foregoing findings of fact, Respondent Paul Alfred Ries has subjected
9 his Vocational Nurse License No. VN 212099 to discipline.

10 2. The agency has jurisdiction to adjudicate this case by default.

11 3. The Board of Vocational Nursing and Psychiatric Technicians is authorized to revoke
12 Respondent's Vocational Nurse License based upon the following violations alleged in the
13 Accusation which are supported by the Default Decision Evidence Packet in this case:

14 a. Respondent is subject to disciplinary action under section 2878.5, subdivision
15 (a) of the Code in that on or about November 18, 2007, and September 8, 2009, Respondent was
16 found in possession of the controlled substance and dangerous drug, methamphetamine, without a
17 prescription in violation of section 4060 of the Code.

18 b. Respondent has subjected his license to disciplinary action under sections 490
19 and 2878, subdivision (f) of the Code in that on or about March 25, 2009, in a criminal
20 proceeding entitled *People of the State of California v. Paul A. Ries*, in San Diego County
21 Superior Court, case number M046446, Respondent was convicted on his plea of guilty of
22 violating Vehicle Code section 23152, subdivision (a), driving under the influence of a controlled
23 substance, to wit, methamphetamine, and Vehicle Code section 4000, a lesser-included offense of
24 violating Vehicle Code section 4463, subdivision (a), possession of a forged vehicle registration,
25 conduct that is substantially related to the qualifications, functions, and duties of a licensed
26 vocational nurse.

27 c. Respondent has subjected his license to disciplinary action under section
28 2878.5, subdivision (b) of the Code in that on or about November 18, 2007, Respondent used a

1 controlled substance (methamphetamine) in a manner that was dangerous or injurious to himself
2 and others, in that he operated a motor vehicle on a public roadway while under the influence.

3 d. Respondent has subjected his license to disciplinary action under section
4 2878.5, subdivision (c) of the Code in that on or about March 25, 2009, Respondent pled guilty to
5 and was convicted of violating Vehicle Code section 23152, subdivision (a), driving under the
6 influence of a controlled substance, to wit, methamphetamine.

7 **ORDER**

8 IT IS SO ORDERED that Vocational Nurse License No. VN 212099, heretofore issued to
9 Respondent Paul Alfred Ries, is revoked.

10 Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a
11 written motion requesting that the Decision be vacated and stating the grounds relied on within
12 seven (7) days after service of the Decision on Respondent. The agency in its discretion may
13 vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

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15 This Decision shall become effective on August 28, 2011.

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17 It is so ORDERED July 29, 2011

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21 FOR THE BOARD OF VOCATIONAL NURSING
22 AND PSYCHIATRIC TECHNICIANS
23 DEPARTMENT OF CONSUMER AFFAIRS
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27 DOJ Matter ID: SD2011700171

28 Attachment:
Exhibit A: Accusation

Exhibit A

Accusation

APR 05 2011

Board of Vocational Nursing
and Psychiatric Technicians

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BEFORE THE
BOARD OF VOCATIONAL NURSING AND PSYCHIATRIC TECHNICIANS
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. VN-2008-710

PAUL ALFRED RIES
3685 Vermont Street
San Diego, CA 92103

A C C U S A T I O N

Vocational Nurse License No. VN 212099

Respondent.

Complainant alleges:

PARTIES

1. Teresa Bello-Jones, J.D., M.S.N., R.N. (Complainant) brings this Accusation solely in her official capacity as the Executive Officer of the Board of Vocational Nursing and Psychiatric Technicians, Department of Consumer Affairs.

2. On or about November 23, 2004, the Board of Vocational Nursing and Psychiatric Technicians issued Vocational Nurse License Number VN 212099 to Paul Alfred Ries (Respondent). The Vocational Nurse License expired on February 28, 2008, and has not been renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Vocational Nursing and Psychiatric Technicians (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2875 of the Code provides, in pertinent part, that the Board may discipline the holder of a vocational nurse license for any reason provided in Article 3 (commencing with section 2875) of the Vocational Nursing Practice Act.

5. Section 118, subdivision (b) of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated. Under section 2892.1 of the Code, the Board may renew an expired license at any time within four years after the expiration.

STATUTORY PROVISIONS

6. Section 482 of the Code states:

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

(a) Considering the denial of a license by the board under Section 480; or

(b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

7. Section 490 of the Code provides, in pertinent part, that the Board may suspend or revoke a license when it finds that the licensee has been convicted of a crime substantially related to the qualifications, functions or duties of a licensed vocational nurse.

8. Section 492 of the Code states:

Notwithstanding any other provision of law, successful completion of any diversion program under the Penal Code, or successful completion of an alcohol and drug problem assessment program under Article 5 (commencing with section 23249.50) of Chapter 12 of Division 11 of the Vehicle Code, shall not prohibit any agency established under Division 2 ([Healing Arts] commencing with Section 500) of this code, or any initiative act referred to in that division, from taking disciplinary action against a licensee or from denying a license for professional misconduct,

1 notwithstanding that evidence of that misconduct may be recorded in a record
2 pertaining to an arrest.

3 This section shall not be construed to apply to any drug diversion program
4 operated by any agency established under Division 2 (commencing with Section 500)
5 of this code, or any initiative act referred to in that division.

6 9. Section 493 of the Code states:

7 Notwithstanding any other provision of law, in a proceeding conducted by a
8 board within the department pursuant to law to deny an application for a license or to
9 suspend or revoke a license or otherwise take disciplinary action against a person who
10 holds a license, upon the ground that the applicant or the licensee has been convicted
11 of a crime substantially related to the qualifications, functions, and duties of the
12 licensee in question, the record of conviction of the crime shall be conclusive
13 evidence of the fact that the conviction occurred, but only of that fact, and the board
14 may inquire into the circumstances surrounding the commission of the crime in order
15 to fix the degree of discipline or to determine if the conviction is substantially related
16 to the qualifications, functions, and duties of the licensee in question.

17 As used in this section, "license" includes "certificate," "permit," "authority,"
18 and "registration."

19 10. Section 2878 of the Code states:

20 The Board may suspend or revoke a license issued under this chapter [the
21 Vocational Nursing Practice Act (Bus. & Prof. Code, 2840, et seq.)] for any of the
22 following:

23 (a) Unprofessional conduct, which includes, but is not limited to, the
24 following:

25

26 (f) Conviction of a crime substantially related to the qualifications, functions,
27 and duties of a licensed vocational nurse, in which event the record of the conviction
28 shall be conclusive evidence of the conviction.

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30 11. Section 2878.5 of the Code states:

31 In addition to other acts constituting unprofessional conduct within the meaning
32 of this chapter [the Vocational Nursing Practice Act] it is unprofessional conduct for
33 a person licensed under this chapter to do any of the following:

34 (a) Obtain or possess in violation of law, or prescribe, or except as directed by
35 a licensed physician and surgeon, dentist or podiatrist administer to himself or herself
36 or furnish or administer to another, any controlled substance as defined in Division 10
37 of the Health and Safety Code, or any dangerous drug as defined in Section 4022.

38 ///

1 (b) Use any controlled substance as defined in Division 10 of the Health and
2 Safety Code, or any dangerous drug as defined in Section 4022, or alcoholic
3 beverages, to an extent or in a manner dangerous or injurious to himself or herself,
4 any other person, or the public, or to the extent that the use impairs his or her ability
5 to conduct with safety to the public the practice authorized by his or her license.

6 (c) Be convicted of a criminal offense involving possession of any narcotic or
7 dangerous drug, or the prescription, consumption, or self-administration of any of the
8 substances described in subdivisions (a) and (b) of this section, in which event the
9 record of the conviction is conclusive evidence thereof.

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11 12. Section 4022 of the Code states

12 "Dangerous drug" or "dangerous device" means any drug or device unsafe for
13 self-use in humans or animals, and includes the following:

14 (a) Any drug that bears the legend: "Caution: federal law prohibits dispensing
15 without prescription," "Rx only," or words of similar import.

16 (b) Any device that bears the statement: "Caution: federal law restricts this
17 device to sale by or on the order of a _____," "Rx only," or words of similar
18 import, the blank to be filled in with the designation of the practitioner licensed to use
19 or order use of the device.

20 (c) Any other drug or device that by federal or state law can be lawfully
21 dispensed only on prescription or furnished pursuant to Section 4006.

22 13. Section 4060 of the Code states, in pertinent part, that no person shall possess any
23 controlled substance, except that furnished to a person upon the prescription of a physician,
24 dentist, podiatrist, optometrist, veterinarian, or naturopathic doctor.

25 REGULATORY PROVISIONS

26 14. California Code of Regulations, title 16, section 2521, states:

27 For the purposes of denial, suspension, or revocation of a license pursuant to
28 Division 1.5 (commencing with Section 475) of the Business and Professions Code, a
crime or act shall be considered to be substantially related to the qualifications,
functions or duties of a licensed vocational nurse if to a substantial degree it
evidences present or potential unfitness of a licensed vocational nurse to perform the
functions authorized by his license in a manner consistent with the public health,
safety, or welfare. Such crimes or acts shall include but not be limited to those
involving the following:

(a) Procuring a license by fraud, misrepresentation, or mistake.

(b) A conviction of practicing medicine without a license in violation of
Chapter 5 of Division 2 of the Business and Professions Code.

1 (c) Violating or attempting to violate, directly or indirectly, or assisting in or
2 abetting the violation of, or conspiring to violate any provision or term of Chapter
6.5, Division 2 of the Business and Professions Code.

3 (d) Aiding or assisting, or agreeing to aid or assist any person or persons,
4 whether a licensed physician or not, in the performance of or arranging for a violation
5 of any of the provisions of Article 13, Chapter 5, Division 2 of the Business and
Professions Code.

6 (e) Conviction of a crime involving fiscal dishonesty.

7 (f) Any crime or act involving the sale, gift, administration, or furnishing of
8 "narcotics or dangerous drugs or dangerous devices" as defined in Section 4022 of the
Business and Professions Code.

9 15. California Code of Regulations, Title 16, section 2522 states:

10 When considering a) the denial of a license under Section 480 of the Business
11 and Professions Code, b) the suspension or revocation of a license on the ground that
12 a licensee has been convicted of a crime, or c) a petition for reinstatement of a license
under Section 2787.7 of the Business and Professions Code, the Board in evaluating
13 the rehabilitation of an individual and his or her present eligibility for a license, will
consider the following criteria:

14 (1) Nature and severity of the act(s), offense(s), or crime(s) under consideration.

15 (2) Actual or potential harm to the public.

16 (3) Actual or potential harm to any patient.

17 (4) Overall disciplinary record.

18 (5) Overall criminal actions taken by any federal, state or local agency or court.

19 (6) Prior warnings on record or prior remediation.

20 (7) Number and/or variety of current violations.

21 (8) Mitigation evidence.

22 (9) In case of a criminal conviction, compliance with terms of sentence and/or
court-ordered probation.

23 (10) Time passed since the act(s) or offense(s) occurred.

24 (11) If applicable, evidence of proceedings to dismiss a conviction pursuant to
25 Penal Code section 1203.4.

26 (12) Cooperation with the Board and other law enforcement or regulatory
agencies.

27 (13) Other rehabilitation evidence.

1 **COST RECOVERY**

2 16. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **DRUG**

7 17. Methamphetamine is a Schedule II controlled substance as designated by Health
8 and Safety Code section 11055, subdivision (d)(2), and is a dangerous drug pursuant to Business
9 and Professions Code section 4022.

10 **FIRST CAUSE FOR DISCIPLINE**

11 **(Unprofessional Conduct – Illegal Possession a Controlled Substance on September 2, 2008)**

12 18. Respondent is subject to disciplinary action under section 2878.5, subdivision (a) of
13 the Code in that Respondent was in possession of the controlled substance and dangerous drug,
14 methamphetamine, without a prescription in violation of section 4060 of the Code. The
15 circumstances are as follows:

16 a. On or about the early morning of September 2, 2008, while conducting a
17 routine patrol, officers from the San Diego Police Department observed a vehicle, driven by
18 Respondent, without a front license plate. (A records check also revealed an expired vehicle
19 registration.) The officers conducted a traffic stop. While speaking with Respondent, the officer
20 noted a strong odor of marijuana coming from inside the vehicle. Respondent was asked to exit
21 the vehicle; he initially refused but then complied when he was told he would be placed under
22 arrest. The officer conducted a record check of Respondent and discovered there was an active
23 warrant for his arrest for his failure to appear at a scheduled court hearing in the matter described
24 in paragraph 22, below. Respondent was searched and the officer located in Respondent's right
25 front pocket a baggie containing what subsequently tested positive for methamphetamine.
26 Respondent told the officer that the methamphetamine did not belong to him; he shared his pants
27 with his neighbor. Respondent was arrested and booked for possession of 1.13 grams of
28 methamphetamine.

1 b. As a result of the arrest, on or about December 3, 2008, in a criminal
2 proceeding entitled *People of the State of California v. Paul A. Ries*, in San Diego County
3 Superior Court, case number CD216074, Respondent pled guilty to violating Health and Safety
4 Code section 11377, subdivision (a), possession of a controlled substance, to wit,
5 methamphetamine.

6 c. As a result of the guilty plea, the court deferred entry of judgment for 18
7 months and Respondent was placed on drug diversion pursuant to Penal Code section 1000, and
8 ordered to pay \$200 in fees, fines, and restitution.

9 **SECOND CAUSE FOR DISCIPLINE**

10 **(March 25, 2009 Criminal Conviction for DUI/Drugs on November 18, 2007)**

11 19. Respondent has subjected his license to disciplinary action under sections 490 and
12 2878, subdivision (f) of the Code in that Respondent was convicted of crimes that are
13 substantially related to the qualifications, functions, and duties of a licensed vocational nurse.
14 The circumstances are as follows:

15 a. On or about March 25, 2009, in a criminal proceeding entitled *People of*
16 *the State of California v. Paul A. Ries*, in San Diego County Superior Court, case number
17 M046446, Respondent was convicted on his plea of guilty of violating Vehicle Code section
18 23152, subdivision (a), driving under the influence of a controlled substance, to wit,
19 methamphetamine, and Vehicle Code section 4000, a lesser-included offense of violating Vehicle
20 Code section 4463, subdivision (a), possession of a forged vehicle registration. The court
21 deferred entry of judgment on an additional count charging Respondent with violating Health
22 and Safety Code section 11377, subdivision (a), possession of a controlled substance, which was
23 ordered to run concurrent with the Penal Code section 1000 diversion ordered in case number
24 CD216074, as detailed in paragraphs 18, above. The remaining charges, including possession of
25 syringe (Bus. & Prof. Code, § 4140), and being under the influence of a controlled substance
26 (Health & Saf. Code, § 11550, subd. (a)), were dismissed pursuant to a plea agreement.

27 b. As a result of the convictions, on or about March 25, 2009, Respondent
28 was sentenced to five years summary probation, and ordered to complete a First Conviction DUI

1 program and a MADD Victim Impact Panel, pay \$1,942 in fees, fines and restitution, and comply
2 with the terms of standard DUI probation.

3 c. The facts that led to the convictions are that on or about the early morning
4 of November 18, 2007, officers from the San Diego Police Department observed a vehicle being
5 driven by Respondent in an unsafe manner, almost causing a collision with their patrol vehicle. A
6 traffic stop was conducted. Upon contact with Respondent, the officer noted that Respondent was
7 acting slow and sluggish. Respondent denied consuming any alcohol and the officer did not
8 detect any odor of alcohol on Respondent's breath. Respondent's pupils were dilated and he had
9 chapped lips, a dry mouth, and a white tongue indicative of using a controlled substance.
10 Respondent denied having used drugs and consented to a search of his vehicle. Inside a backpack
11 on the passenger floorboard, the officers located a ziplock baggie containing three syringes, a
12 brown, unmarked, pill bottle containing what tested positive for methamphetamine. They also
13 found a bottle containing an unknown substance, and a metal container with seven oblong pills.
14 Respondent was placed under arrest and a methamphetamine pipe was located in his pants pocket
15 during a search. A computer check of the vehicle showed the registration had expired three
16 months earlier. Upon closer inspection of the license plate, the officers discovered the
17 registration tab was actually a photo copy of another license plate tab. Respondent submitted to a
18 series of field sobriety tests which indicated he was impaired by a controlled substance.
19 Respondent provided a sample of blood which subsequently tested positive for amphetamines.

20 THIRD CAUSE FOR DISCIPLINE

21 (Unprofessional Conduct – Illegal Possession a Controlled Substance)

22 20. Respondent is subject to disciplinary action under section 2878.5, subdivision (a) of
23 the Code for unprofessional conduct, in that on or about November 18, 2007, as described in
24 paragraph 19, above, Respondent was in possession of the controlled substance and dangerous
25 drug, methamphetamine, without a prescription in violation of section 4060 of the Code.

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1 **FOURTH CAUSE FOR DISCIPLINE**

2 **(Unprofessional Conduct – Use of a Controlled Substance in a Dangerous Manner)**

3 21. Respondent has subjected his license to disciplinary action under section 2878.5,
4 subdivision (b) of the Code in that on or about November 18, 2007, as described in paragraph 19,
5 above, Respondent used a controlled substance (methamphetamine) in a manner that was
6 dangerous or injurious to himself and others, in that he operated a motor vehicle on a public
7 roadway while under the influence.

8 **FIFTH CAUSE FOR DISCIPLINE**

9 **(Unprofessional Conduct - Criminal Conviction Involving**
10 **the Consumption of a Controlled Substance)**

11 22. Respondent has subjected his license to disciplinary action under section 2878.5,
12 subdivision (c) of the Code in that on or about March 25, 2009, as described in paragraph 19,
13 above, Respondent pled guilty to and was convicted of violating Vehicle Code section 23152,
14 subdivision (a), driving under the influence of a controlled substance, to wit, methamphetamine.

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PRAYER

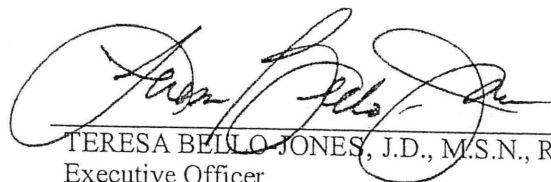
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Vocational Nursing and Psychiatric Technicians issue a decision:

1. Revoking or suspending Vocational Nurse License Number VN 212099, issued to Paul Alfred Ries;

2. Ordering Paul Alfred Ries to pay the Board of Vocational Nursing and Psychiatric Technicians the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: April 5, 2011



TERESA BELLO JONES, J.D., M.S.N., R.N.
Executive Officer
Board of Vocational Nursing and Psychiatric Technicians
Department of Consumer Affairs
State of California
Complainant

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